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An Act To Address Uncertified Practice of Underground Oil Storage Tank Installation and Inspection

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA §10012, sub-§2, as amended by PL 2001, c. 231, §14, is further amended to read:

2. Disposal of fees and civil penalties. All fees received by the board under subsection 1 and civil penalties as authorized by section 10015 received by the board related to underground oil storage tank installers, underground gasoline storage tank removers or underground oil storage tank inspectors imposed under sections 10015 or 10016 must be paid to the Treasurer of State to be deposited into the Ground Water Oil Clean-up Fund and used for the purpose of carrying out all applicable provisions of this chapter. Any balance of fees and civil penalties as authorized by section 10015 does not lapse but must be carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

Sec. 2. 32 MRSA §10016 is enacted to read:

§ 10016. Uncertified practice

1. Complaints. The board may receive or initiate complaints of uncertified practice as an underground oil storage tank installer or inspector.

2. Investigation. Complaints of uncertified practice under subsection 1 may be investigated by the board, the department or the Attorney General. If sufficient evidence of uncertified practice is uncovered, the evidence must be compiled and presented to the Attorney General or the local district attorney's office for prosecution.

3. Criminal penalties. Notwithstanding any other provision of law:

A. A person who practices or represents to the public that the person is authorized to practice as an underground oil storage tank installer or inspector and intentionally, knowingly or recklessly fails to obtain certification as required by this chapter or intentionally, knowingly or recklessly practices or represents to the public that the person is authorized to practice after the certification required by this chapter has expired or been suspended or revoked commits a Class E crime; and

B. A person who violates paragraph A when the person has a prior conviction under this subsection commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence, except that, for purposes of this paragraph, the date of the prior conviction must precede the commission of the offense being enhanced by no more than 3 years.

4. Civil violations. A person who practices or represents to the public that the person is authorized to practice as an underground oil storage tank installer or inspector without first obtaining certification as required by this chapter or after the certification has expired or has been suspended or revoked commits a civil violation for which a fine of not less than \$100 and not more than \$2,000 for each violation may be adjudged. An action under this subsection may be brought in District Court or Superior Court.

5. Injunctions. The Attorney General may bring an action in District Court or Superior Court to enjoin a person from violating subsection 4 and to restore to a person who has suffered any ascertainable loss by reason of that violation any money or personal or real property that may have been acquired by means of that violation and to compel the return of compensation received for engaging in that unlawful conduct.

A person who violates the terms of an injunction issued under this subsection shall pay to the State a fine of not more than \$10,000 for each violation. In an action under this subsection, when a permanent injunction has been issued, the court may order the person against whom the permanent injunction is issued to pay to the Ground Water Oil Clean-up Fund under Title 38, chapter 3, subchapter 2-B the costs of the investigation of that person by the Attorney General and the costs of suit, including attorney's fees. In an action by the Attorney General brought against a person for violating the terms of an injunction issued under this subsection, the court may make the necessary orders or judgments to restore to a person who has suffered any ascertainable loss any money or personal or real property or to compel the return of compensation received by reason of such conduct found to be in violation of an injunction.

Effective June 30, 2008